

Return of cultural objects policy

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Contact	National Museum of Australia GPO Box 1901 CANBERRA ACT 2601 Tel: (02) 6208 5000 Email: information@nma.gov.au Website: www.nma.gov.au

1. Title

Return of Cultural Objects Policy

2. Introduction

The National Museum of Australia (the Museum) is a major cultural institution charged with researching, collecting, preserving and exhibiting historical material of the Australian nation. The Museum focuses on the three interrelated areas of Aboriginal and Torres Strait Islander history and culture, Australia's history and society since European settlement in 1788 and the interaction of people with the environment.

Established in 1980, the Museum is a publicly funded institution governed as a statutory authority in the Commonwealth Arts portfolio. The Museum's building on Acton Peninsula, Canberra, opened in March 2001.

3. Scope

This policy applies to requests for the return of cultural objects.

This policy excludes Aboriginal and Torres Strait Islander human remains, secret/sacred and private material. These are covered by separate policies.

3.1 Description

From time to time the National Museum of Australia will receive requests for the transfer of ownership of cultural objects.

The Museum believes that to the best of its knowledge the cultural objects in its possession were acquired into its collections or care ethically and in the belief that acquisition was in accordance with appropriate legal and cultural processes.

This policy describes the Museum's philosophy regarding the return of cultural objects.

The Museum's procedures for disposal of cultural objects are covered by the *National Museum of Australia Act* and by the Museum's Deaccessioning and Disposal Policy.

3.2 Purpose

The policy guides Executive and Council considerations regarding requests for the return of cultural objects.

3.3 Rationale

Policies and procedures for managing the requests for the return of cultural objects are important considerations for museums worldwide. Several international instruments have been developed which aim to deal with property which may have been collected illegally or unethically. These are:

- a) the Convention on the Protection of Cultural Property in the Event of Armed Conflict (UNESCO, 1954) in which State parties undertake to prevent the export of heritage goods from occupied territory, or alternatively to return them after war has ceased
- b) the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO, 1970), which prevents museums from acquiring cultural property which has been illegally exported or stolen from a museum or public institution, and provides a mechanism to allow States to request the return of any such cultural property
- c) the Convention on Stolen or Illegally Exported Cultural Objects (UNIDROIT, 1995) adopted in Rome, which creates a private international law remedy for individual

owners to file a complaint, enlarges the definition of cultural property and imposes a requirement to return the object

- d) the *ICOM Code of Ethics for Museums*.

Australia has ratified the 1954 and 1970 UNESCO Conventions, but not the UNIDROIT Convention. While Australia is not bound to comply with international instruments it has not ratified, the Museum considers that its policies should reflect and build on current international thinking about the return of cultural objects.

The Museum maintains a strong interest in promoting access by all Australians to its collections. However the Museum recognises that from time to time competing claims for access to cultural objects will arise. In assessing claims for the transfer of ownership of objects the Museum must review the request in relation to its enabling legislation, the legal rights of donors, and the legal rights of the person requesting the return of the objects, and balance requests for return against the rights of other Australians and future generations to enjoy these cultural objects. The circumstances for each request for return will vary and it is important that the Museum thoroughly considers each case on the evidence.

In negotiating competing claims to ownership of cultural objects, the Museum will investigate a range of ways to provide access to objects that may be acceptable to all parties. This may include development of exhibitions, loans, various forms of photographic or multimedia reproduction, and copying of photographic material.

4. Principles or guidelines

4.1 The Museum recognises that from time to time it may be approached with requests for the return of cultural objects.

4.2 The Museum also recognises that from time to time circumstances may arise where a case may be advanced that demonstrates that an object was, at some stage in its history and prior to its acquisition by the Museum:

- a) acquired without the free and informed consent of the custodian at the time
- b) acquired in contravention of tradition or custom
- c) acquired through a person legally or culturally unauthorised to dispose of the object
- d) acquired through an illegal act of war or aggression
- e) acquired through a process, or with a history, that renders it unfit for the Museum's Collection.

In these circumstances the Museum will give due consideration to a request for return of the object, in accordance with this policy and its legal obligations (where applicable).

4.3 To facilitate resolution of a request for the return or transfer of ownership of a cultural object by the Museum:

- a) Council will reasonably and impartially consider each application on its merits in order to determine whether the object in question is fit or unfit for the collection based on the case advanced by the applicant
- b) Council's decision shall have regard to whether the applicant has demonstrated that the object was acquired in one or more of the circumstances described in paragraph 4.2 and shall be informed by its legal obligations and prevailing industry best practice and ethics
- c) the Museum will determine its legal title to the objects requested for return
- d) the Museum will consider the legal and ethical rights of the applicant

- e) any connection between the applicant and the object will be ascertained
- f) the rights and opinions of other potential applicants for the return of the object will be assessed
- g) where approval is given for the return of a cultural object, the Museum's normal legislative and policy procedures shall be followed
- h) the reasons for Council's decision will be made public.

5. Definition of terms

Cultural objects

Cultural objects are objects that are produced by people or that have particular cultural significance to people. This can include both culturally modified and unmodified objects.

Transfer of ownership

Transfer of ownership refers to the practice of deaccessioning items from the Museum's collections in order for the Museum to relinquish legal ownership. Once the deaccessioning process is complete, the Museum is free to transfer ownership to another party.

Unfit

An object is determined as 'unfit' for the collection through reference to attributes including, but not limited to, ethical, moral, legal, social, religious and physical attributes of the object.

6. References

Return of Cultural Objects (Excluding Human Remains and Secret/Sacred Objects) Policy, National Museum of Australia, 1996

National Museum of Australia Act 1980

Convention on the Protection of Cultural Property in the Event of Armed Conflict, UNESCO (United Nations Educational, Scientific and Cultural Organization), 1954

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, UNESCO (United Nations Educational, Scientific and Cultural Organization), 1970

Convention on Stolen or Illegally Exported Cultural Objects, UNIDROIT (International Institute for the Unification of Private Law), 1995

ICOM Code of Ethics for Museums, International Council of Museums (ICOM), 2004

7. Implementation

7.1 Other related policies

Aboriginal and Torres Strait Islander Human Remains Policy, 2005

Aboriginal and Torres Strait Islander Secret/Sacred and Private Material Policy, 2006

Deaccessioning and Disposal Policy, 2002

7.2 Exclusions

This policy excludes Aboriginal and Torres Strait Islander human remains, Aboriginal and Torres Strait Islander secret/sacred and private material, and other Indigenous human remains.

7.3 Monitoring

This policy will be reviewed in May 2009.